UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GLOBAL EQUITY MANAGEMENT (SA) PTY. LTD.,	)	
Plaintiff,	)	
	)	**Civil Action No. 2:16-cv-00095**
v.	)	**(Lead case)**
	)	
EXPEDIA.COM AND EXPEDIA, INC.,	)	**JURY TRIAL DEMANDED**
Defendants.	)	

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Plaintiff Global Equity Management (SA) Pty. Ltd. ("GEMSA") and Defendants submit this Joint Claim Construction and Prehearing Statement pursuant to Rule 4-3 of the Patent Rules (P.R.) contained in Appendix M to the Local Rules of the Eastern District of Texas.

Pursuant to P.R. 4-3(a), the parties have been unable to come to an agreement as to the meaning of any terms, despite meeting and conferring as required by the Patent Rules.

The parties intend to continue to meet and confer in an attempt to reduce the number of issues before the Court at claim construction prior to and during claim construction briefing and prior to the *Markman* hearing in this matter.

Pursuant to P.R. 4-3(b), Exhibits A and B hereto set forth [1] each party's proposed construction of each disputed claim term, phrase, or clause, [2] an identification of all references from the specification or prosecution history that support that construction, and [3] an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses.

Defendants state the following with regard to Plaintiff's P.R. 4-3(b) submissions:

- Plaintiff has indicated that it may rely on certain expert and/or percipient witness testimony as extrinsic evidence supporting its proposed constructions. However, the information Plaintiff has provided to date is insufficient to put Defendants on notice as to the substance of this testimony and to permit a meaningful deposition of those witnesses, and Plaintiff has not indicated that it will provide testimony in the form of a declaration from these witnesses in advance of the Claim Construction Hearing. Accordingly, Defendants assert that Plaintiff may not rely on *any* witness testimony during the Claim Construction Hearing.
- Plaintiff has indicated that it may rely on certain computers, which it alleges constitute intrinsic evidence, that are located in Australia. Plaintiff avers that these computers cannot be brought to the United States for inspection. Similarly, Plaintiff indicates that it may rely on the testimony of a witness (inventor Schumann Rafizadeh) who resides in Australia, but indicates that it will not produce Mr. Rafizadeh in the United States for deposition. Specifically, in email correspondence dated August 26, 2016, Plaintiff's counsel stated that "Rafizadeh may serve as an expert. He is located in Australia. We do not agree to produce him in the US." To the extent Plaintiff refuses to make any evidence on which it relies available in the United States, Defendants assert that such reliance is improper and intends to move to strike that evidence and Plaintiff's corresponding reliance on the evidence.

- Plaintiff proposes that a claim term from claim 2 of U.S. Patent No. 6,690,400 ("'400 Patent") should be the subject of the Claim Construction Hearing, despite the fact that claim 2 of the '400 Patent has not been asserted against *any* defendant in this case. Plaintiff has not submitted infringement contentions, and Defendants have accordingly not submitted invalidity contentions, for claim 2. Plaintiff has provided no authority for the proposition that claims can be added as asserted claims during the claim construction process, despite Defendants' request for the same. Accordingly, Defendants assert that the claim term from claim 2 is not properly included in this Statement or as a term to be addressed at the Claim Construction Hearing. To the extent Plaintiff is allowed to amend its contentions in the future, Defendants reserve the right to argue that the claim term Plaintiff requests construction of from claim 2 of the '400 Patent is a means-plus-function term that lacks sufficient algorithmic or other disclosure in the '400 Patent, and is thus invalid as indefinite under 35 U.S.C. § 112. Defendants likewise reserve the right to offer expert testimony to this effect.

Pursuant to P.R. 4-3(c), Plaintiff anticipates that no more than four (4) hours will be required for the Claim-Construction Hearing., and Defendants anticipate that no more than six (6) total hours will be required for the Claim Construction Hearing.

Pursuant to P.R. 4-3(d):

- Plaintiff proposes to call, live or by declaration, one or more witnesses, including experts, at the Claim Construction Hearing; the identity of each such witness is as follows: Dr. Craig Rosenberg, Farzin Firoozmand, and Schuman Rafizadeh. Each witness will testify about the understanding of one of ordinary skill in the art as to the claim terms; specifically, that one of ordinary skill in the art would understand the claim terms to have the meanings as reflected by the attached charts that indicate for what terms and meanings these witnesses will testify.

- Defendants presently intend to call, live or by declaration, Mr. Richard M. Goodin, PE, as an expert witness on issues related to claim construction. On August 26, 2016, Defendants provided Plaintiff with a declaration from Mr. Goodin setting forth his detailed opinions that certain of the means-plus-function terms in certain claims of the patents-in-suit lack algorithmic or other structural disclosure in specifications of the patents-in-suit. Defendants intend to rely on Mr. Goodin's testimony to support the finding that the claims containing these terms are invalid as indefinite under 35 U.S.C. § 112 as indefinite. *See Advanced Ground Information Sys., Inc. v. Life360, Inc.*, Case No. 2015-1732 (Fed. Cir. July 28, 2016).

Pursuant to P.R. 4-3(e), the parties state as follows:

Plaintiff is not aware of any other issues that might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing. Defendants believe it would be useful to conduct a prehearing conference in September, 2016, well before the Claim Construction Hearing and before September 27, 2016 (the end of claim construction discovery and the due date for Plaintiff's Opening Claim Construction Brief (Dkt. 37)), to address several outstanding issues addressed herein. Specifically, Defendants believe it would be useful to conduct a prehearing conference to address at least the following: [1] whether Plaintiff is permitted to introduce testimony from live witnesses at the Claim Construction Hearing if Plaintiff does not provide a declaration or otherwise provide Defendants with notice of the substance of their proposed testimony in sufficient detail to permit a meaningful deposition; [2] whether terms from un-asserted claims are properly the subject of the Claim Construction

Hearing; [3] Plaintiff's refusal to produce its declarant(s) for deposition in the United States; [4] Plaintiff's refusal to make the computers it posits are intrinsic evidence available for inspection in the United States; and [5] any other issues that arise between the submission of this Statement and the prehearing conference.

Dated: August 26, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on August 26, 2016. Any other counsel of record will be served by first class U.S. mail.

/s/ William P. Ramey, III
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